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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TANISHA RAQUEL MORGAN,

Defendant and Appellant.

F076551

(Super. Ct. No. VCF326768)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn T. Montejano, Judge.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Defendant Tanisha Raquel Morgan was charged with resisting an executive officer (Pen. Code, § 69; counts 1 & 2), driving while under the influence of alcohol (Veh. Code, § 23152, subd. (a); count 3), and driving with a 0.08 percent or higher blood alcohol level (Veh. Code, § 23152, subd. (b); count 4). As to counts 3 and 4, the information further alleged defendant's blood alcohol level was 0.15 percent or more within the meaning of Vehicle Code section 23578.

On February 18, 2016, defendant pled not guilty.

On February 3, 2017, defendant filed a *Pitchess*¹ motion regarding six officers.

On February 28, 2017, after an in camera review of one officer's records, the court found no relevant information to disclose.

On August 31, 2017, a jury found defendant guilty as charged and found the special allegations true.

On October 24, 2017, the trial court suspended imposition of sentence and granted defendant three years' probation with 150 days in jail. The court ordered defendant to pay an "alcohol and abuse prevention fee in the amount of \$50 pursuant to 1463.25." The minute order states the fee was imposed "pursuant to PC1463.25."

On November 7, 2017, defendant filed a notice of appeal.

DISCUSSION²

On appeal, defendant requests that we (1) independently review the records reviewed by the trial court on her *Pitchess* motion and determine whether the trial court abused its discretion by not providing her access to any records and (2) modify the minute order to reflect the correct statute under which the alcohol abuse education and

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

² The facts of the case are not relevant to the issues raised.

prevention penalty assessment was imposed. The People agree. We modify the judgment and affirm.

I. *Pitchess* Motion

Defendant requested disclosure of personnel records relevant to excessive force, fabrication of charges or evidence, unreasonable search and seizure, and dishonesty. The court held an in camera review of Officer Ferguson's record and denied the motion to disclose any records. Defendant asks that we review Ferguson's personnel records. The People do not object.

"A criminal defendant has a limited right to discovery of a peace officer's personnel records. [Citation.] Peace officer personnel records are confidential and can only be discovered pursuant to Evidence Code sections 1043 and 1045." (*Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 318.) "[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] Good cause for discovery exists when the defendant shows both 'materiality' to the subject matter of the pending litigation and a 'reasonable belief' that the agency has the type of information sought.' [Citation.] ... If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations [citation], 'the trial court should then disclose to the defendant "such information [that] is relevant to the subject matter involved in the pending litigation." ' ' ' (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

A trial court's decision on a *Pitchess* motion is reviewed under an abuse of discretion standard. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.) The exercise of that discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We

review the record for “materials so clearly pertinent to the issues raised by the *Pitchess* discovery motion that failure to disclose them was an abuse of *Pitchess* discretion.” (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) The record of the trial court’s in camera hearing is sealed, and appellate counsel are not allowed to see it. (See *People v. Hughes* (2002) 27 Cal.4th 287, 330.) Thus, on request, the appellate court must independently review the sealed record. (*People v. Prince, supra*, at p. 1285.)

We have reviewed Ferguson’s personnel record and find no relevant information in it. We conclude the trial court did not abuse its discretion by deciding not to disclose any records.

II. Correction of the Record

The parties agree the record should be amended to reflect that the \$50 alcohol abuse education and prevention penalty assessment was imposed pursuant to Vehicle Code section 23645, not pursuant to Penal Code section 1463.25. (See *People v. Benner* (2010) 185 Cal.App.4th 791, 797).

DISPOSITION

The matter is remanded to the trial court with directions to amend the sentencing minute order to reflect that the alcohol abuse education fee was imposed pursuant to Vehicle Code section 23645, not Penal Code section 1463.25, and to forward certified copies to the appropriate entities. As so modified, the judgment is affirmed.